

1 James R. Condo (#005867)  
2 Amanda C. Sheridan (#027360)  
3 SNELL & WILMER L.L.P.  
4 One Arizona Center  
5 400 E. Van Buren, Suite 1900  
Phoenix, AZ 85004-2204  
Telephone: (602) 382-6000  
jcondo@swlaw.com  
asheridan@swlaw.com

6 Richard B. North, Jr. (admitted *pro hac vice*)  
7 Georgia Bar No. 545599  
Matthew B. Lerner (admitted *pro hac vice*)  
8 Georgia Bar No. 446986  
Taylor Tapley Daly (admitted *pro hac vice*)  
9 Georgia Bar No. 697887  
NELSON MULLINS RILEY & SCARBOROUGH LLP  
10 Atlantic Station  
11 201 17th Street, NW, Suite 1700  
Atlanta, GA 30363  
Telephone: (404) 322-6000  
richard.north@nelsonmullins.com  
matthew.lerner@nelsonmullins.com

12 *Attorneys for Defendants*  
C. R. Bard, Inc. and  
Bard Peripheral Vascular, Inc.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

17 IN RE: Bard IVC Filters Products Liability  
18 Litigation

No. 2:15-MD-02641-DGC

**DEFENDANTS' MOTION FOR  
LEAVE TO FILE UNDER SEAL  
CERTAIN EXHIBITS IN  
SUPPORT OF BARD'S MOTION  
TO EXCLUDE THE OPINIONS  
OF SUZANNE PARISIAN, M.D.  
AND MEMORANDUM OF LAW  
IN SUPPORT**

24 Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively  
25 “Bard”) hereby respectfully move this Court, pursuant to the Stipulated Protective Order  
26 (Doc. 269), Federal Rule of Civil Procedure 26(c)(1)(G), and Local Civil Rule 5.6 for  
27 leave to file under seal certain exhibits attached in support of Bard’s Motion to Exclude  
28 the Opinions of Suzanne Parisian, M.D. and Memorandum of Law in Support. These

1 exhibits, contain certain trade secrets and confidential information that are protected under  
 2 the Stipulated Protective Order, warranting protection from public disclosure.  
 3 Accordingly, there is good cause to grant Defendants' Motion for Leave to File Under  
 4 Seal Certain Exhibits in Support of Bard's Motion to Exclude the Opinions of Suzanne  
 5 Parisian, M.D. and Memorandum of Law in Support. Defendants have notified Plaintiffs  
 6 of their intent to file this Motion. Plaintiffs have agreed to the filing of such motions in the  
 7 past; however, to date, Plaintiffs' have not yet responded to Defendants' attempts to meet  
 8 and confer on whether Plaintiffs oppose the Motion once Plaintiffs have had an  
 9 opportunity to review the documents in issue. A list of the Exhibits sought to be sealed are  
 10 attached hereto as Exhibit A.

#### **ARGUMENT AND CITATION OF AUTHORITY**

12 "When a court grants a protective order for information produced during discovery,  
 13 it already has determined that 'good cause' exists to protect this information from being  
 14 disclosed to the public by balancing the needs for discovery against the need for  
 15 confidentiality." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,  
 16 1213 (9th Cir. 2002). See also, *Medicis Pharm. Corp. v. Acella Pharm., LLC*, CV 10-  
 17 1780-PHX-JAT, 2012 WL 2260928 at \*2 (D. Ariz. June 15, 2012) (sealing exhibits  
 18 related to "Medicis' marketing strategy, Acella's product formulation,...various emails  
 19 and deposition transcripts, viscosity test data, sales and marketing information, and  
 20 various other documents" because "[m]uch of this information has been previously sealed  
 21 by the Court, has been designated as confidential by the parties pursuant to the protective  
 22 order in this case, or could otherwise potentially harm the parties if released publicly  
 23 because of its confidential and sensitive nature.").

24 Certain exhibits to Bard's Motion to Exclude the Opinions of Suzanne Parisian,  
 25 M.D., specifically Exhibit A (Dr. Parisian's Expert Report), and Exhibit B (Dr. Parisian's  
 26 Supplemental Expert Report) (collectively "Reports"), contain pieces of highly  
 27 competitive, confidential, proprietary information that warrant protection under Federal  
 28 Rule of Civil Procedure 26(c)(1)(G) because the documents are not made public by Bard

1 and, if obtained by Bard's competitors, could give an unfair economic advantage to those  
2 competitors. *Blanchard & Co., Inc. v. Barrick Gold Corp.*, No. 02-3721, 2004 WL  
3 737485, at \*5 (E.D. La. Apr. 5, 2004) (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d  
4 772, 786 (3d Cir. 1994)). Dr. Parisian's Reports cite and extensively quote dozens of  
5 confidential Bard documents, including technical and design files, testing documents,  
6 internal documents regarding Bard's purchase of a predecessor company, adverse event  
7 documents including specific references to patients by age and complication, design and  
8 risk management documents, and numerous internal emails between high-level Bard  
9 employees. The Reports quote so extensively from confidential documents that filing the  
10 Reports is akin to filing the documents themselves. Except for a small number of patent  
11 and other public documents, all of the Bard documents cited in the Reports were produced  
12 to Plaintiffs as "Confidential – Subject to Protective Order" on each page pursuant to  
13 Stipulated Protective Order (Doc. 269) ¶ 6.

14 The public disclosure of these exhibits would reveal confidential, proprietary and  
15 trade secret information and would create a heightened risk of irreparable harm to Bard's  
16 competitive business concerns. Further, its inclusion in the public record would not only  
17 harm Bard because of the trade secrets and confidential information it contains, but it  
18 would also eviscerate the significant time and resources Bard has expended in protecting  
19 its business information. The potential for abuse and for competitive loss are real.  
20 Accordingly, Defendants request that the exhibits identified in Exhibit A be sealed.

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1 RESPECTFULLY SUBMITTED this 24th day of August, 2017.

2 s/Taylor Tapley Daly  
3 Richard B. North, Jr.  
4 Georgia Bar No. 545599  
5 Matthew B. Lerner  
6 Georgia Bar No. 446986  
7 Taylor Tapley Daly  
8 Georgia Bar No. 697887  
9 NELSON MULLINS RILEY & SCARBOROUGH, LLP  
10 Atlantic Station  
11 201 17th Street, NW / Suite 1700  
12 Atlanta, GA 30363  
13 PH: (404) 322-6000  
14 FX: (404) 322-6050  
15 richard.north@nelsonmullins.com  
matthew.lerner@nelsonmullins.com  
taylor.daly@nelsonmullins.com

16 James R. Condo (#005867)  
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18 SNELL & WILMER L.L.P.  
19 One Arizona Center  
20 400 E. Van Buren  
21 Phoenix, AZ 85004-2204  
22 PH: (602) 382-6000  
23 JCondo@swlaw.com  
24 ASheridan@swlaw.com

25 **Attorneys for Defendants C. R. Bard, Inc. and**  
26 **Bard Peripheral Vascular, Inc.**

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2                   **CERTIFICATE OF SERVICE**  
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6                   I hereby certify that August 24, 2017, the foregoing was electronically filed with  
7 the Clerk of Court using the CM/ECF system which will automatically send e-mail  
8 notification of such filing to all attorneys of record.  
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10

11                   s/ Taylor Tapley Daly  
12                   Taylor Tapley Daly  
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1                   **EXHIBIT A**

2                   **DOCUMENTS PROPOSED TO BE FILED UNDER SEAL**

3                   Defendants request they be permitted to file under seal the following documents in  
4 support of their Motion to Exclude the Opinions of Suzanne Parisian, M.D. and  
5 Memorandum of Law in Support.

6                   Exhibit A.        Expert Report of Suzanne Parisian, M.D.

7                   Exhibit B.        Supplemental Expert Report of Suzanne Parisian, M.D.

Nelson Mullins Riley & Scarborough

201 17<sup>th</sup> Street NW, Suite 1700  
Atlanta, GA 30363  
LLP

(404) 322-6000